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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 14 1995

FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Interconnection and Resale Obligations )  
Pertaining to )  
Commercial Mobile Radio Services )

CC Docket No. 94-54

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

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## SUMMARY

The Rural Cellular Association (RCA) supports the Commission's tentative conclusion that there is no present need to establish additional regulations for Commercial Mobile Radio Service (CMRS) providers with respect to interconnection and roaming obligations. RCA also supports the adoption of the Commission's proposal to apply the resale obligations that are now applicable to cellular providers to all CMRS providers.

RCA submits that the establishment of policies concerning interconnection, roaming and resale should be based on two principles: 1) maintenance of regulatory parity among CMRS providers; and 2) recognition that the policies should be flexible enough to address the varying characteristics of market areas.

To the extent that the Commission utilizes a market power analysis to determine whether a carrier should be subject to additional regulatory obligations, the RCA asks the Commission to recognize that a carrier that is licensed to serve only a rural service area (RSA) does not have the opportunity to dominate the provision of service within the larger market area defined by the economic community of interest. Similarly, the affiliation of a rural cellular carrier with a rural Independent telephone company does not result in the attribution of market power to the carrier.

With respect to the Commission's inquiry regarding whether a limitation should be placed on mandated availability of resale to facilities-based CMRS providers, the RCA proposes that the principle of regulatory parity supports the adoption of the five-year limitation that is applicable to cellular carriers. RCA

supports the Commission's conclusion that resellers do not constitute a class of customer entitled to favorable treatment above other classes of customers.

The RCA submits that a cellular carrier should never be required to fulfill a reseller's request for service that is not reasonable. Because it is not reasonable to require a carrier to provide service without reasonable assurance of the opportunity to recover its costs, a carrier that fulfills a reseller's request for service should be permitted: to require the reseller to guarantee the utilization of service for a reasonable period of time; to require the customer to provide a service deposit and/or service initiation fee; and to have the opportunity to increase rates for service, if necessary, prior to initiating service.

Finally, the RCA supports the Commission's decision that it will not require carriers to provide direct interconnection of a reseller's switch to the carrier's network. There is no basis to provide resellers with a special mandated interconnection right. RCA submits that in the competitive CMRS market place, the decision of whether to offer reseller switch interconnection should be left to each competing CMRS provider.

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COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), pursuant to Section 1.415 of the Commission's Rules<sup>1</sup> and in response to the Second Notice of Proposed Rule Making ("Second NPRM") in this docket<sup>2</sup> submits its comments in the above-referenced proceeding. RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside.

INTRODUCTION

RCA supports the Commission's general policy objective to foster the development of diverse and competitive mobile services throughout the nation. The commitment of RCA members to making significant investment in telecommunications infrastructure and to

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<sup>1</sup>/ 47 C.F.R. § 1.415.

<sup>2</sup>/ Second Notice of Proposed Rule Making, CC Docket No. 94-54, FCC 95-149 (released April 20, 1995).

providing advanced technological services to rural areas is well demonstrated by their prompt and full build out of cellular systems in their rural service areas. RCA members recognize that the anticipated development of existing CMRS providers and licensing of new CMRS providers, together with the continuing technological evolution in the mobile service industry, has created a need to establish policies which address the relationships between and among the various CMRS providers.

RCA believes that the establishment of these policies should be founded on two principles: 1) maintenance of regulatory parity among CMRS providers; and 2) recognition that the policies should be flexible enough to address the varying characteristics of market areas. Parity is required in the regulatory treatment of all CMRS providers in order to ensure that regulatory policies neither establish nor permit any class of carrier to receive favorable treatment over another. Flexibility is required to ensure that the policies established can concurrently address the needs of service users and providers that develop in the more robust markets without imposing unnecessary economic and administrative burden on carriers that have made an investment commitment in less economically lucrative service areas.

In the Second NPRM, the Commission sets forth its tentative conclusions regarding the imposition of direct interconnection arrangements among commercial mobile radio service ("CMRS") providers, policies concerning roaming arrangements among CMRS providers, and the rules addressing resale obligations of CMRS

providers. The Commission's conclusions generally incorporate the principles of parity and flexibility in recognizing that varying market conditions may warrant distinctive regulatory treatment. Accordingly, the RCA supports the Commission's overall approach regarding interconnection, roaming, and resale, and offers additional recommendations in response to the specific issues raised in the Second NPRM, as set forth below.

## **I. Interconnection**

### **A. The provision of cellular service to a rural service area does not demonstrate that the carrier holds "market power."**

RCA agrees with the Commission's conclusion "that it is premature, at this stage in the development of the CMRS industry, for the Commission to impose a general interstate interconnection obligation on all CMRS providers." Second NPRM at para. 29. The Commission correctly notes that all customers of a CMRS provider can interconnect with the users of another provider's network through connectivity to the landline local exchange carrier (LEC) network. As CMRS services develop in a market, there may be growth in the number of calls made between users of two different CMRS networks to an extent that warrants consideration of direct connectivity between the networks. The Commission has properly recognized, however, that nothing in the record of this proceeding suggests that the necessity of regulatory requirements to ensure that carriers desiring direct connection will reach a rational interconnection arrangement. Second NPRM at para. 37.

RCA supports the Commission's tentative conclusion that the determination of whether specific interconnection obligations should be imposed on a carrier should be based on a market power analysis. Second NPRM at para. 41. In making an analysis of market power, it is vital that the Commission accurately define "market." RCA respectfully submits that rural service area boundaries do not generally coincide with economic market areas. The Commission has already recognized this fact in its decisions to award other spectrum licenses to areas defined by economic communities of interest. Accordingly, where a market power analysis is utilized to determine whether a carrier should be subject to additional regulatory obligations, the Commission should consider a carrier's position throughout the entire economic market with which it is associated.

The basis for this consideration is particularly evident with regard to rural cellular carriers. The fact that a rural cellular carrier has fulfilled its build-out commitment to provide service throughout its licensed rural area is not alone a sufficient basis to conclude that the carrier is "dominant", and should, therefore be subjected to additional regulatory burden and obligations. RCA respectfully requests that the Commission recognize that license area alone should not be the geographic determinant of the "market" or whether a cellular carrier is "dominant" within a market.

Every rural cellular area is associated within a (generally) larger BTA and (always much) larger MTA, both of which are defined on the basis of economic communities of interest. The BTA and MTA



definitions have been employed by the Commission to define the license areas for broadband PCS providers who will compete with cellular carriers. The PCS licensees have far different license coverage requirements than cellular carriers; these requirements are based on coverage of population within the license area, not geographic area.

Accordingly, it is possible for a PCS provider to meet its coverage requirements without providing service in the more rural areas of its license area. Under these circumstances, it is possible for rural cellular carriers to be left by calculated default to "dominate" within their service areas because potential PCS competitors elect not to make investment in the less economically lucrative rural territory within their large license areas. The rural cellular carrier, however, would hardly be "dominant" throughout the entire economic market area.

Under these circumstances, the rural cellular carrier's market power held solely in a rural area of a larger economic market can not alone justify the imposition of specific interconnection obligations. RCA agrees with the Commission's tentative conclusion that the public interest is adequately protected and does not require additional regulation where a carrier lacks the market power required to adversely affect the provision of competitive services by other carriers. Second NPRM at para. 42. The public interest is adequately protected by the fact that the carrier is subject to the complaint process to redress any violation of the general interconnection requirements imposed on all common carriers

by Sections 201 and 202 of the Communications Act of 1934, as amended.

**B. Affiliation of a rural cellular provider with a rural LEC does not demonstrate that the carrier holds "market power."**

In the Second NPRM, the Commission also seeks comment on its "assessment of the role of LEC investment in CMRS providers in determining the reasonableness of a denial of interconnection."

Second NPRM at para. 43. The Commission indicates that it

would find LEC investment in, and affiliation with, the party denying interconnection an important factor in assessing whether such denial was motivated by an anticompetitive animus. . . . LEC-affiliated CMRS carriers may have a unique incentive to deny interconnection so as to keep CMRS-to-CMRS traffic interconnected through the local exchange landline network, and to continue to collect CMRS interconnection from both sets of CMRS providers through their access charge structure.

Second NPRM at para. 43.

The RCA respectfully submits that any such concerns are not applicable to rural independent telephone company investment in a rural cellular carrier. The rural independent telephone company owners of rural cellular systems generally serve fewer than 10,000 access lines. They lack the market presence to bottleneck the provision of landline interconnection throughout the cellular license service areas because all of the landline exchanges within the rural cellular area are not necessarily served by a single LEC affiliated with the cellular carrier.

In fact, the operations of rural cellular carriers owned by rural Independent LECs often require interconnection with the

larger non-affiliated LEC that is the predominant provider of landline service throughout the RSA. Accordingly, the RCA proposes that investment by a rural LEC in a rural cellular carrier should not be considered as a factor that justifies the imposition of additional interconnection obligations on the rural cellular carrier.

## **II. Roaming**

The RCA agrees with the Commission's conclusion that no regulatory action is required at this time with respect to roaming. Second NPRM at para. 56. RCA members recognize, as the Commission has observed, that roaming capability is an increasingly important feature of mobile telecommunications. Accordingly, the growth of competitive CMRS providers will likely stimulate robust competition in service offerings to ensure that attractive roaming service is available to customers. The RCA agrees that there is no basis in the record to support the promulgation of rules regarding roaming service.

The RCA further agrees with the Commission's decision to continue to monitor the development of roaming service and to intercede, if necessary, where parties are unable to reach reasonable private agreements. Second NPRM at para. 58. The Commission correctly notes that the exercise of market power should not be utilized to force unreasonable roaming arrangements. RCA respectfully submits that consideration of whether a proposed roaming arrangement is reasonable should include consideration of

the economic characteristics of the carrier's license area and the degree of market power the carrier has throughout the entire economic market and not simply a single license area.

For example, a requirement for reciprocal roaming rates by a carrier that dominates an economic region may be an unreasonable condition on a rural cellular carrier. The lowest rate offered by the large carrier to roamers on its network may be at a level that would adequately compensate the large carrier for the provision of roaming service, but would be inadequate compensation to the rural cellular carrier. Rural providers should not be forced to enter into inequitable roaming arrangements with larger carriers in order to ensure that their customers can obtain the same favorable roaming rates that a large carrier may offer customers of other providers.

### **III. Resale Obligations**

- A. Resale obligations should apply to all CMRS providers on the same basis; resellers do not warrant any special treatment that a carrier does not elect to provide other customers that utilize similar volumes of service.**

The RCA believes that the Commission should adopt its tentative conclusion to apply the existing resale obligations imposed on cellular carriers to all CMRS providers. Second NPRM at para. 83. This proposal is appropriately consistent with the principle of regulatory parity.

The RCA is concerned, however, that the Commission should continue to distinguish the right to resell from the assertion of

an unjustified right to be assured of a profit. The Commission has correctly refrained from establishing specific rules regarding rates for resellers. Resellers do not constitute a special class of customer entitled to more favorable rates than other classes of customers. The Commission has properly noted that resellers are simply entitled to be treated the same as any other large customer:

[A]ny volume discount available to a cellular or other CMRS carrier's large "retail" customers must also be available to resellers on the same terms and conditions offered to retail customers.

Second NPRM at para. 85.

Similar considerations support adoption of the Commission's tentative conclusion that a cellular carrier should not be required to interconnect to a reseller's switch. Second NPRM at para. 96. There is no basis in the record to afford resellers special interconnection rights. RCA submits that in a competitive market place served by multiple CMRS providers, the decision of whether or not to offer reseller switch interconnection should be left to market place negotiation. One facilities-based carrier may determine that the benefits of providing reseller switch interconnection outweigh the costs, while another competitive provider may determine that the provision of such interconnection would be unreasonable.

The requirement to provide service to a reseller, as with any other customer, should be contingent upon whether the request is reasonable for the carrier to fulfill. The reasonableness of a request for service requires consideration of whether the carrier

has the capacity to provide the service. In instances where the fulfillment of a request for service may necessitate investment by the carrier which it would not otherwise incur, the request may not be reasonable unless the carrier has some assurance of the ability to recover its investment.

Where this situation occurs, the RCA respectfully submits that the Commission should make clear that the fulfillment of the request for service may be conditioned on, among other things, requiring the customer to guarantee the utilization of the service for a period of time that enables the carrier to recover its costs; requiring the customer to provide a service deposit and/or service initiation fee; and the opportunity to increase rates for the service, if necessary, prior to initiating service.

In the absence of permitting a facilities-based carrier to condition the provision of services for resale in this manner, a facilities-based carrier could be inequitably forced to make imprudent investment in order to accommodate the business plans of a reseller who has no commitment to either investing in infrastructure or providing service to the public. The facilities-based carrier would additionally be exposed to the reseller's abandonment of the utilization of the network, leaving stranded investment that could only be recovered by increased rates to the public. The RCA, accordingly, respectfully requests that the Commission clarify that the obligation to consider whether a reseller's request for service is reasonable may include the conditions as proposed above.

**B. The Commission's resale policies should not inadvertently discourage investment in infrastructure.**

The Commission is properly concerned that by permitting facilities-based CMRS providers to resell the facilities of competitors, the CMRS licensee that elects to resell may elect not to invest in the build-out of its service area. Second NPRM at para. 89. Under these circumstances, the public interest may be harmed because the licensee may have no incentive to build-out its network and provide additional facilities-based competitive services.

The Commission addressed this concern with regard to cellular carriers by permitting a licensee to apply restrictions on resale to licensees of cellular systems on the other channel block in their market at the expiration of the five-year build-out period. The RCA agrees with the Commission's tentative conclusion that a similar time limitation should be applied to the obligation of any facilities-based CMRS provider to permit another facilities-based CMRS provider to resell its services. Second NPRM at para. 90. Although varying rules apply to the build-out requirements of different CMRS licenses, RCA submits that principles of equity and consistency require that the same five year time period limitation should apply.

Under this proposal, a facilities-based CMRS provider would have five years from the grant of its license to resell the reasonably available facilities of other CMRS providers that are licensed to provide service within the same geographic location.

At the end of this five-year period, the facilities-based provider would be able to limit the availability of resale to the competitive provider. During the five-year period, and thereafter, the facilities-based carrier should be able to refuse a request for resale from another facilities-based carrier if (as described in Section A, above) the request is unreasonable. The Commission's resale rules should never be available to permit a reseller to utilize a carrier's facility in a manner that exposes the carrier to economic or technical harm.

The principle of regulatory parity supports the application of the five-year period in which a CMRS licensee can, without limitations that do not apply to non-facilities based resellers, resell the services of other CMRS providers within the same license area. After the five-year period, facilities-based carriers could still resell services to other facilities-based CMRS provider licensed to serve the same geographic area, but they would not be required to do so.

Subsequent to the five years, the facilities-based provider would be able to offer resale to its facilities-based competitor under terms and conditions defined by the market place, including consideration of the cost of investment versus the cost of resale. The competitive carrier would be left to make a market driven choice to either continue to resell on the best terms it can negotiate with its competitors that have invested in facilities, or to invest in the build-out of its own infrastructure. RCA respectfully requests that the Commission adopt this policy which



is consistent with the Commission's overall policy direction to rely on market forces instead of additional regulation to define rational relationships between CMRS providers.

#### **CONCLUSION**

RCA submits that the Commission should adopt its tentative conclusions that no additional regulations are required with regard to the interconnection and roaming obligations of cellular carriers. The Commission should also adopt its tentative conclusion to apply resale obligations that currently apply only to cellular carriers to all CMRS providers. RCA further respectfully requests that the Commission adopt the proposals set forth above to ensure that a facilities-based CMRS provider is not required to fulfill requests to resell its facilities which could result in economic harm to the carrier.

Respectfully submitted,

**THE RURAL CELLULAR ASSOCIATION**

By: Richard P. Ekstrand (se)  
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Dated: June 14, 1995

**CERTIFICATE OF SERVICE**

I, Nicola A. Chenosky, of Kraskin & Lesse, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 14th day of June, 1995, by hand delivery, to the following parties:

  
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